



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC-2014-0261]

RIN 3150-AJ50

List of Approved Spent Fuel Storage Casks:

NAC International, Inc., MAGNASTOR®

System; Certificate of Compliance No. 1031,

Amendment No. 5

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of June 29, 2015, for the direct final rule that was published in the *Federal Register* on April 15, 2015. This direct final rule amended the NRC's spent fuel storage regulations by revising the NAC International, Inc., MAGNASTOR® System listing within the "List of approved spent fuel storage casks" to include Amendment No. 5 to Certificate of Compliance (CoC) No. 1031. Amendment No. 5 makes numerous changes to the Technical Specifications (TSs) including adding a new damaged fuel assembly, revising the maximum or minimum enrichments for three fuel assembly designs, adding four-zone preferential loading for pressurized-water reactor fuel

assemblies and increasing the maximum dose rates in limiting condition for operation (LCO)

3.3.1, and other editorial changes to Appendices A and B of the TSs.

DATES: Effective date: The effective date of June 29, 2015, for the direct final rule published April 15, 2015 (80 FR 20149), is confirmed.

ADDRESSES: Please refer to Docket ID NRC-2014-0261 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0261. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Solomon Sahle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3781; e-mail: Solomon.Sahle@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

On April 15, 2015 (80 FR 20149), the NRC published a direct final rule amending its regulations in § 72.214 of Title 10 of the *Code of Federal Regulations* (10 CFR) by revising the NAC International, Inc., MAGNASTOR® System listing within the “List of approved spent fuel storage casks” to include Amendment No. 5 to CoC No. 1031. Amendment No. 5 makes numerous changes to the TSs including adding a new damaged fuel assembly, revising the maximum or minimum enrichments for three fuel assembly designs, adding four-zone preferential loading for pressurized-water reactor fuel assemblies and increasing the maximum dose rates in LCO 3.3.1, and other editorial changes to Appendices A and B of the TSs.

II. Public Comments on the Companion Proposed Rule

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on June 29, 2015. The NRC received two identical public comments from private citizens on the companion proposed rule (80 FR 20171). Electronic copies of these comments can be obtained from the Federal rulemaking Web site, <http://www.regulations.gov>, by searching for Docket ID NRC-2014-0261. The comments also are available in ADAMS under Accession No. ML15147A691. For the reasons discussed in more detail in Section III, “Public Comment Analysis,” of this document, none of the comments received are considered significant adverse comments.

III. Public Comment Analysis.

The NRC received two identical comments from private citizens on the proposed rule. As explained in the April 15, 2015, direct final rule (80 FR 20149), the NRC would withdraw the direct final rule only if it received a “significant adverse comment.” This is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TSs.

The NRC determined that none of the comments submitted on this direct final rule met any of these criteria. The comments either were already addressed in the NRC staff’s safety evaluation report (SER) (ADAMS Accession No. ML14216A310), were beyond the scope of this rulemaking, or failed to provide a reason sufficient to require a substantive response in a

notice-and-comment rulemaking. The NRC has not made any changes to the direct final rule as a result of the public comments. However, the NRC is taking this opportunity to respond to the individual comments to clarify information about the CoC rulemaking process.

For rulemakings amending or revising a CoC, the scope of the rulemaking is limited to the specific changes requested by the applicant in the request for the amendment or amendment revision. Therefore, comments about the system, or spent fuel storage in general that are not applicable to the changes requested by the applicant are outside the scope of this rulemaking. Comments about details of the particular system that is the subject of the rulemaking, but that are not being addressed by the specific changes requested, have already been resolved in prior rulemakings. Persons who have questions or concerns about prior rulemakings and the resulting final rules may consider the NRC's process for petitions for rulemaking under 10 CFR 2.802, "Petition for rulemaking." Additionally, safety concerns about any NRC-regulated activity may be reported to the NRC in accordance with the guidance posted on the NRC's public Web site at <http://www.nrc.gov/about-nrc/regulatory/allegations/safety-concern.html>. This Web site provides information on how to notify the NRC of emergency or non-emergency issues.

The NRC identified two overall issues raised in the two identical comments received, and the NRC's responses to these issues follow.

Issue 1: Increased Dose Rate around the Storage Cask

The commenter stated that it is unacceptable and unnecessary to increase dry cask exposure. The commenter stated that the exposure should be decreasing instead of increasing by 26 percent. By referencing a Biological Effects of Ionizing Radiation (BEIR) report, the commenter stated that 120 mrem per hour gives whoever or whatever is around the dry cask for 1 year over 100 percent chance of cancer or leukemia. The commenter also stated that it is impossible to have 450 mrem per hour on top of the dry cask without a similar dose surrounding it; and that such dose does not meet as low as is reasonably achievable requirements and

impacts not just people, but animals, too. The commenter suggested counting all casks together in determining dose, rather than just using a single cask, as indicated in Revision 1 of NUREG-1536, "Standard Review Plan for Dry Cask Storage Systems" (ADAMS Accession No. ML101040620). The commenter noted that variations in cask emissions always appear to add up to the required dose at the fence line.

NRC Response:

These comments are not within the scope of this specific rulemaking. This rulemaking is limited to the addition of Amendment No. 5 to CoC No. 1031 for the MAGNASTOR® System. This rulemaking does not propose any change in the standards for approval of a CoC or to the guidance documents (such as NUREG-1536) that are used to guide review of the CoC applications. The regulations in 10 CFR part 72 for approval of a CoC require the applicant to demonstrate that storage of spent fuel will not result in an annual dose beyond the established regulatory limits for an individual located beyond the site boundary. (See 10 CFR 72.104). Therefore, even though the changes included in Amendment No. 5 increase the dose rate on the surface of the canister, the amendment was found to be in compliance with 10 CFR part 72 because, as documented in Section 5.0 of the NRC staff's SER (ADAMS Accession No. ML14216A310), the certificate holder demonstrated that the potential dose at the site boundary would remain below regulatory limits.

Moreover, storage casks that will be loaded or stored under Amendment No. 5 to the MAGNASTOR® System are only authorized for use under a general license to power reactor licensees. These licensees are subject to a number of other regulatory requirements that limit exposure from the spent fuel in the casks through regulations that directly limit access to the casks and limit dose to workers or members of the public located on site at a nuclear power plant. (See 10 CFR parts 20 and 73). Therefore, any general licensee that uses this cask system is subject to additional regulatory requirements that ensure dose rates to individuals on site remain within regulatory limits. Those additional regulatory requirements that apply to the general licensee are not, however, part of this rulemaking, but are beyond its scope.

Issue 2: Bollards and Earthquake Protection

The commenter stated that replacing real earthquake-proof engineering with bollards is not acceptable, as they might puncture holes in the dry casks. The commenter suggested developing other ways to earthquake-proof already filled casks such as anchors, dampers, or other means. The commenter also suggested making all new casks earthquake-proof, for the maximum earthquake anywhere.

NRC Response:

The safety issue regarding the use of bollards was addressed by the NRC staff in its SER, and the commenter does not raise any additional information that would alter the staff's determination that Amendment No. 5 to the MAGNASTOR[®] System, when used within the requirements of the proposed CoC, will safely store spent fuel. Amendment No. 5 includes a specific TS to address this issue, TS 4.3.1(i) (ADAMS Accession No. ML14216A257), which requires a general licensee using the system under this amendment to evaluate the impact of the bollards on the storage cask using that site's design-basis earthquake. The TS requires the licensee's analysis to demonstrate that any damage to the storage cask from the bollards when analyzed using the site's specific design-basis earthquake, is bounded by the applicant's analysis of a non-mechanistic tipover event contained in the final safety analysis report. (See Section 3 of the NRC staff's SER (ADAMS Accession No. ML14216A310)).

As to the general comments raising concerns with the regulatory requirements and process in 10 CFR part 72 for evaluating seismic issues in the CoC application, those comments are beyond the scope of this rulemaking which is limited to the addition of Amendment No. 5 to CoC No. 1031 for the MAGNASTOR[®] System. Persons who have questions or concerns about prior rulemakings and the resulting final rules may consider the NRC's process for petitions for rulemaking under 10 CFR 2.802.

Therefore, the NRC staff has concluded that the comments received on the companion proposed rule for Amendment No. 5 to CoC No. 1031 for the MAGNASTOR[®] System are not

significant adverse comments as defined in NUREG/BR-0053, Revision 6, "United States Nuclear Regulatory Commission Regulations Handbook" (ADAMS Accession No. ML052720461). Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 22nd day of June, 2015.

For the Nuclear Regulatory Commission.

Cindy Bladey, Chief,
Rules, Announcements, and Directives Branch,
Division of Administrative Services,
Office of Administration.
[FR Doc. 2015-15607 Filed: 6/24/2015 08:45 am;

Publication Date: 6/25/2015]